

JUSTICE THROUGH TRIBUNAL: AN ALTERNATIVE ARGUMENT FOR RESTORATIVE JUSTICE

*Alok Kumar**

*Assistant Professor of Law, Himachal Pradesh National Law University, Shimla.

Abstract

Changing socio-economic and political philosophies and development of science and technologies in the wake of renaissance changed the outlook of the society towards notion of justice in light of human dignity and security during the modern period. One of such change is Restorative justice which is a process which can be used as a method to prevent the conflicts between the parties and build a healthy relationship by the method of communication to repair the harm more effectively. Restorative justice rests on certain common values such as respect, responsibility, inclusion, empathy, honesty, openness and most important of all accountability. Another development of the modern time which was an answer to the need of the affected party i.e the timely and less expensive justice against the regular court system is tribunal. This paper is an endeavour to explain how the tribunals while delivering justice in favour of the person who suffered from wrong inflicted on him provides restorative justice.

Tribunal: Meaning, its aims and Purpose

With the extension of the functions of government to one new field after another, with the progressive limitations on the rights of the individual in the interests of health, safety and general welfare of the community as a whole, with the development of collective control over the conditions of employment, the manner of living, and the elementary necessities of the people there has arisen need for a technique of adjudication better suited to respond to the social requirement of the time than the elaborate and costly system of the decision provided by litigation in the courts of Law during the 19th and 20th centuries.¹ These phenomena increased the tendency of the withdrawal of disputes from traditional courts and their adjudication by administration. In response to this the parliament explored the possibility of setting up new organs of adjudication which would do the work more rapidly, more cheaply, more efficiently than the ordinary courts; which would possess greater technical skill and knowledge and which would give greater need to the social interests involved; which would decide disputes with conscious efforts at furthering the social policy embodied in the legislation increased tremendously.² The result of the exploration was setting up the tribunals for settlements of disputes.

The traditional judicial system is not expected to dispose of expeditiously numerous disputes of public importance pertaining to persons with meagre means. The Development projects of national importance cannot afford to wait and witness the luxury of judicial pronouncements. The courts would not be able to dispose of speedily the disputes pertaining to slum clearance, housing licensing, rate-fixing, labour disputes, acquisition for public purpose, compensation etc. Therefore, the most commonly employed technique to answer the above-mentioned problem, is adjudication by Tribunals.³

Tribunals have grown in response to the need to provide for specialized forums of disputes settlements, which would possess some expertise in the field, and be comparatively cheaper, more expeditious and freer from technical procedures.

*Assistant Professor of Law, Himachal Pradesh National Law University, Shimla

¹ William A. Robson, *Justice and Administrative Law: A Study of the British Constitution* 33 (1957, London, Stevens & Sons).

² *Id.*, p. 442.

³ *Report of the Committee on Administrative Tribunals and Enquiries* 9 (Cmd. 218-1957).

As far as the meaning of the word tribunal is concerned particularly in the Indian context, the word “Tribunal” has at least three meanings. **Firstly**, all quasi-judicial bodies, whether part and parcel of a department or otherwise, are regarded as tribunals.

Secondly, a narrow approach has been taken to view that only such bodies are tribunals as are outside the control of the department involved in the dispute, either because they are under the control of some other department or because of the nature of their composition or because they adjudicate on disputes between private parties.

Thirdly, the word “tribunal” has also been used in article 136 of the Constitution of India. In the absence of a definition of a general application, the characteristics of tribunals vis-à-vis courts have been subject of debate before the courts. In the first case which came up for consideration before the Supreme Court, the primary question was to ascertain the exact connotations of the words court and tribunal.⁴

A body or authority for being characterized as a tribunal for the purposes of article 136 of the Constitution must possess the following features⁵:

- (a) It must be a body or authority invested by law with power to determine questions of disputes affecting the rights of citizen.
- (b) Such body or authority in arriving at the decision must be under a duty to act judicially. Whether an authority has a duty to act judicially is to be gathered from the provisions of the Act under which it is constituted. Generally speaking, if the investigation is subject to certain procedural attributes contemplating an opportunity of presenting its case to a party, ascertainment of the facts by means of evidence if the dispute be on a question of fact, and if the dispute be on a question of law on the presentation of legal arguments, and the decision result in the disposal of the matter on findings based upon those questions of law and fact, then such a body or authority acts judicially.
- (c) Such a body must be invested with the judicial power of the state. This means that the authority required to act judicially, though not a court in strict sense, should be invested with the “trapping of the court”, such as authority to determine matters in case initiated by parties, sitting in public, power to compel attendance of witnesses and to examine them on oath, duty to follow fundamental rules of evidence, provisions for imposing sanctions to enforce obedience to its command. Such trapping will ordinarily make the authority which is under duty to act judicially, a tribunal.

In its epoch-making decision⁶ the Supreme Court clarified the expression “tribunal” as used in article 136 does not mean a court, but includes within its ambit all adjudicatory bodies, provided they are constituted by the state and are invested with judicial, as distinguished from purely administrative or executive, functions.

The apex court in *Meenakshi Mills’s case*⁷ reiterated the position held in *Jaswant Sugar Mills Case*⁸ regarding the tests to decide whether the body or authority is Tribunal or not in following words:

- (a) It should not be an administrative body pure and simple, but a quasi-judicial body as well;
- (b) It should be under an obligation to act judicially;
- (c) It should have some trapping of the court;
- (d) It should be constituted by the state;
- (e) The state should confer on it its inherent judicial power, i.e., power to adjudicate upon disputes.

Owing to the absence of any clear-cut definition of the very word tribunal it appears to be identical to ordinary court but they are separate from the regular court and constituting in its special court constituted with inherent power of the state.

⁴ The Bharat Bank Ltd., Delhi v. Employees of The Bharat Bank, AIR 1950 SC 188.

⁵ M. P. Singh, (ed.), *V. N. Shukla’s Constitution of India* 511 (2011, Eastern Book Company)

⁶ *Supra* note 4.

⁷ *Workmen of Meenakshi Mills Ltd. v. Meenakshi Mills Ltd.*, AIR 1994 SC 2696.

⁸ *Jaswant Sugar Mills Ltd. v. Lashmi Chand*, AIR 1963 SC 677

The principal consideration leading way for the creation of the tribunal is one of the growing complexities of law and with increasing tensions in society which led increasing volumes of litigations and imposing heavy burden on the courts. Therefore, it was often found necessary to create special agencies for adjudication of complex disputes. Therefore, the tribunals have been created with multi folded objectives:

First, it will reduce the burden of various Courts and thereby give them more time to deal with other cases expeditiously because the cases generated by the operations of newly enacted socio-economic legislation of today if left with the regular courts for adjudication then it will place huge burden on the judicial machinery clogging it beyond redemption and will slow down the administrative process.

Second, speedy relief in respect of grievances: Properly constituted tribunal can lighten the work of courts resulting in imminence benefit to the people who suffered a great deal because of delayed justice. Most of the cases arising in course of administrative functioning, the formality of atmosphere such as procedural rigidity is not adequate for quick disposal of cases. In most of the cases what is needed is an informal atmosphere untrammelled by too elaborate and technical rules of procedure or evidence. Effective implementation of new policies demands speedy, less expensive and decentralized determinations of a large number of cases. These advantages are offered by tribunals.

Third, Specialization and Expertise: A judge is a generalist, while many newly generated cases arising out of modern administrative process need an expertise in various disciplines other than law as well as an expert knowledge of particular subjects to which these cases relate. An expert may be in better position to adjudicate upon such subject matters rather than a generalist lawyer judges. Administrative tribunals have such kind of advantage over regular courts.

Fourth, Easy Accessibility and Less Expensive: Some of the reasons, therefore, for entrusting adjudication of certain matters by the legislature to bodies other than courts *inter alia* are less expensiveness, easy accessibility, expeditious disposal of disputes, expertise, freedom from technicality, and flexibility. The various adjudicatory bodies have grown not to satisfy any political dogma or philosophy, but out of practical necessity to cope with certain problems of public concern.

Restorative Justice

The quest for justice started in Greek thought, is still burning issue but lacking any precise definition. The notion of 'justice' invokes diverse elements, like, social, political, economic, logical, psychological, and consequently any method or ideas or concepts emphasize one or some of them by ignoring other or others accomplished with the honest mischief of being insufficient or incomplete in its approach. In furtherance of the quest of justice in modern period where human dignity and security was gaining focus, it has been perceived that sometimes the notion of justice lies in undoing the harm, repairing the loss, making the victims regain their lost sense of security and imparting a closure to the unfortunate event. In this leg the development is culminated as Restorative justice.

By 'restorative justice' meant one comprehensive mechanism within the fold of regular legal framework to accelerate the speedy disposal of the legal issues aiming at to achieve social peace and order as well as least grievances in processual justice. Hence, it is one ancillary mechanism to dispel the social belief of 'injustice' to the victim, offender as well as the community. The provinces enfolded within the processes of restorative justice are:

- i. the 'want' of the survivors/victims from the existing system of justice;
- ii. responsiveness of the prevalent system of justice to the identified needs;
- iii. possibility of removal of the aberrations caused in the interpersonal relationship between the survivor/victim and offender through such restorative process;
- iv. experience perceived by the community at large in such reparation process; and
- v. impact on reformatory process of justice as well.

In short, providing the scope of restorative justice means introduction another subsidiary procedural mechanism in the legal framework of the country for, in order to make the restorative process of justice functional besides the fold of existing legal framework in India would require a different set of operating agents who are to play dual role like, to act as community service and social counselling also as being the members of 'reparation body' of the society to provide 'justice'. The chief purpose of restorative justice is to restore peace and harmonious co-existence of conflicting interests in the society.

Restorative justice what I perceive is undoing and repair the harm caused to any person wrongfully. But unless it is timely and less expensive it will not serve the idea of justice.

Restorative justice is a participative, consensual, inclusive and collaborative effort towards speedy resolution of disputes and tribunals being outcome of the changing political dogmas in 20th century plays a very significant role in promoting restorative justice.

Role of Tribunal in promoting Restorative Justice

With the rising functions of the state to one after another, with the progressive limitations of the rights of the individual in the interests of health, safety and general welfare of the community as a whole and the elementary necessities of the people raised the necessity for an alternative mechanism to respond the requirement of the time over the elaborate and costly system of the decision provided by litigation in the courts of Law during the 19th and 20th centuries leads to increase the tendency of the withdrawal of disputes from traditional courts because the traditional judicial system is not expected to dispose of expeditiously numerous disputes of public importance pertaining to persons with meagre means with respect to the disputes pertaining to slum clearance, housing licensing, rate-fixing, labour disputes, acquisition for public purpose, compensation etc. Therefore, the most commonly employed technique to answer the above-mentioned problem is adjudication by Tribunals.

Keeping in mind the need for which the tribunals were established is very relevant to promote the notion of Restorative justice as the very foundation of restorative justice is collaborative efforts towards speedy resolution of disputes.

The tribunal has been established with the purpose to resolve the disputes without falling into complexities of the procedures of the regular courts with cost effective manner which is one of the focus area of the restorative justice and if the position of the sufferer could not been restored within a reasonable time and if it became very expensive then the notion of restorative justice will be betrayed.

The working of tribunal like consumer, tax, Green tribunal, the Maintenance and welfare of Parents and Senior citizen Tribunal are very good example which worked for promotion of restorative justice by providing procedure free and less expensive justice.

Conclusion:

In this part the researcher would like to conclude that although the tribunal system is very effective in promoting the restorative justice as the purpose for which the tribunals are established are:

1. Speedy justice as they are not bound by the procedure of regular court;
2. Cost effective justice
3. Justice by experts of the area

Despite the advantages the tribunal have some flaws also like number of unfilled vacancy and unnecessary entry of advocates which leads to delayed and expensive justice.